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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/055,183

10/26/2001

Michael W. Linder

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SP-TI-3-1
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EXAMINER

LAU, TUNG S

ART UNIT

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10/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/055,183	Applicant(s) LINDER ET AL.	
	Examiner TUNG S. LAU	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
 4a) Of the above claim(s) 33-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/26/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 33-76 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention without traverse as noted 01/29/2008.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 12, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 26, 27, 28, 29, 31, 30, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Katsumi Morishita (Index. Profiling of Three-Dimensional Optical Waveguide by the Propagation-mode Near-Filed Method, IEEE 1986, page 1120-1124).

Regarding claim 1:

Katsumi Morishita describes a computer-readable medium having stored thereon a data structure (page 1121, fig. 1), the data structure including data representing a characteristic of an optical member (page 1121), the data structure comprising: at least one field containing information corresponding to a three-dimensional map of the optical member (page 1121, fig. 5), the map including a plurality of refractive index measurements taken at a plurality of interior locations within the optical member (page 1121, fig. 6).

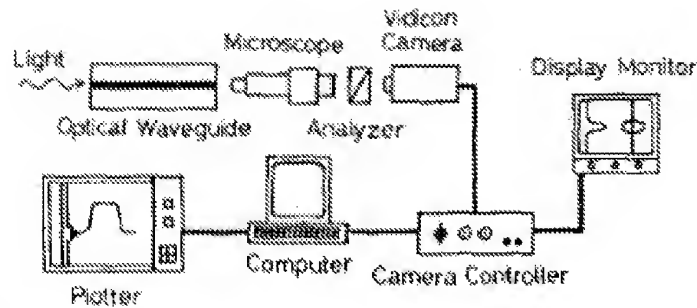


Fig. 1. Experimental apparatus for refractive-index profile measurements.

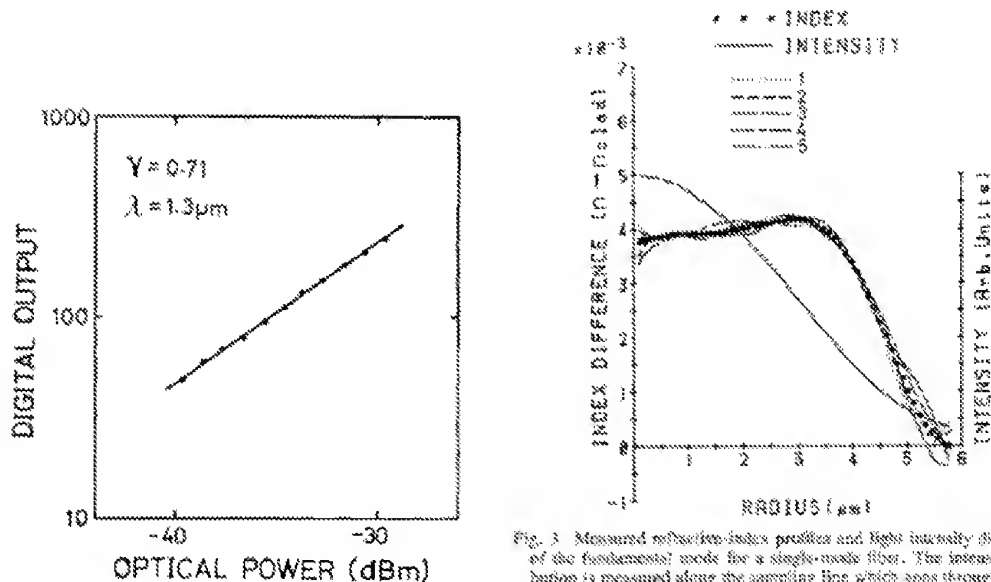


Fig. 2. Light transfer characteristic of an infrared vidicon.

Fig. 3. Measured refractive-index profiles and light intensity distribution of the fundamental mode for a single-mode fiber. The intensity distribution is measured along the sampling line which goes through the core center.

Regarding claim 12:

Katsumi Morishita describes a computer-readable medium having computer-executable instructions (fig. 1, page 1121) for performing a method for characterizing an optical member (fig. 1), the method comprising: providing information corresponding to a plurality of refractive index measurements taken at a plurality of interior locations within the optical member (fig. 3, 4, 5, 6); and converting the information into a three-dimensional map of the optical member

(fig. 3, 4, 5, 6), the three-dimensional map including a plurality of refractive index values distributed throughout the interior of the optical member (fig. 3, 4, 5, 6).

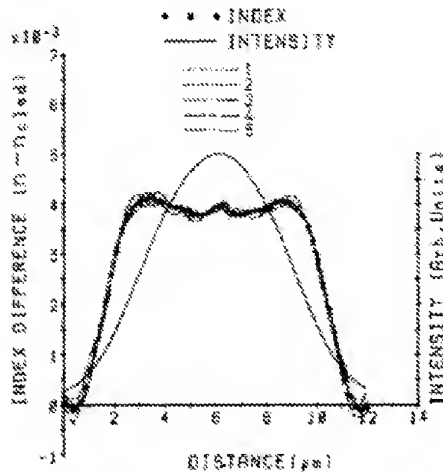


Fig. 4. Measured refractive-index profile and light intensity distribution of the fundamental mode for a single-mode fiber. The intensity distribution is measured with a 6.2- μm square resolution grid.

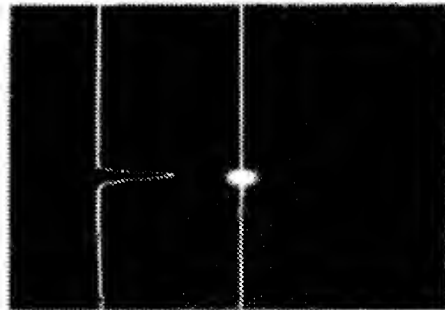


Fig. 5. Video image of the TE fundamental mode for a three-dimensional optical waveguide formed by K^+ ion exchange in a soda lime glass.

Regarding claim 2, Katsumi Morishita further describes compressed (page 1121) digital data (fig. 1).

Regarding claim 3, Katsumi Morishita further describes a floppy disk (page 1121, desktop computer).

Regarding claim 4, Katsumi Morishita further describes a hard disk (page 1121, desktop computer).

Regarding claim 5, Katsumi Morishita further describes a CD-ROM (page 1121, desktop computer).

Regarding claim 6, Katsumi Morishita further describes an electronic memory (page 1121, desktop computer).

Regarding claim 7, Katsumi Morishita further describes optical storage (page 1121, desktop computer, CD-ROM, optical drive in desktop computer).

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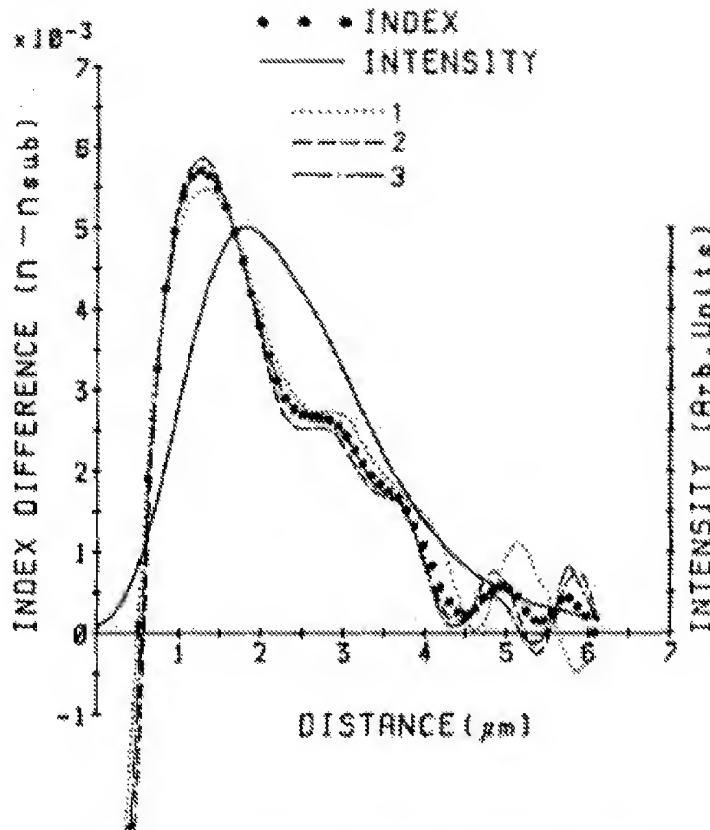


Fig. 6. Measured refractive-index profiles and light intensity distribution of the TE fundamental mode for a three-dimensional optical waveguide formed by K^+ ion exchange in a soda lime glass. The intensity distribution is measured with a $0.1\text{-}\mu\text{m}$ square resolution grid.

Regarding claim 8, Katsumi Morishita further describes database (page 1121, desktop computer).

Regarding claim 9, Katsumi Morishita further describes a plurality of refractive index measurements (fig. 2-6) of a strip extracted from the optical member (fig. 1, optical waveguide), the plurality of refractive index measurements taken at a plurality of locations normal to a cross-sectional area formed by a radial axis of the optical member and a axis normal to the radial axis (page 1123).

Regarding claim 10, Katsumi Morishita further describes at least one field includes a field identifying the optical member (fig. 4).

Regarding claim 11, Katsumi Morishita further describes the at least one field includes a homogeneity map of the optical member (fig. 2-6).

Regarding claim 14, Katsumi Morishita further describes transmitting the information using e-mail (see desktop computer).

Regarding claim 15, Katsumi Morishita further describes transmitting the information over the Internet (see desktop computer).

Regarding claim 16, Katsumi Morishita further describes transmitting the information using a telecommunications network (see desktop computer).

Regarding claim 17, Katsumi Morishita further describes wireless network (see desktop computer others section).

Regarding claim 18, Katsumi Morishita further describes the step of providing includes physical delivery of a computer readable medium having stored thereon a data structure (page 1121, fig. 1), the data structure including at least one field containing information corresponding to a three- dimensional map of the optical member (fig. 4-6), the map including a plurality of refractive index measurements taken at a plurality of interior locations within the optical member (fig. 4-6).

Regarding claim 26, Katsumi Morishita further describes the step of storing data corresponding to the three dimensional map on a medium (fig. 1, 4-6).

Regarding claim 27, Katsumi Morishita further describes including paper (fig. 1, plotter, printer in desktop computer).

Regarding claim 28, Katsumi Morishita further describes optical storage (CD-Rom, optical drive in desktop computer).

Regarding claim 29, Katsumi Morishita further describes a floppy disk (page 1121, desktop computer).

Regarding claim 31, Katsumi Morishita further describes electronic memory (page 1121, desktop computer).

Regarding claim 30, Katsumi Morishita further describes hard disk (page 1121, desktop computer).

Regarding claim 32, Katsumi Morishita further describes compact disk (page 1121, cd-rom desktop computer).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 13, 19, 20, 21, 22, 23, 25 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsumi Morishita (Index. Profiling of Three-Dimensional Optical Waveguide by the Propagation-mode Near-Field Method, IEEE 1986, page 1120-1124) in view of Matsui et al. (U.S. Patent 6,438,298).

Regarding claim 13, Katsumi Morishita further describes the strip having a

cross- sectional area in a plane formed by a radial axis of the optical member and an axis normal to the radial axis (page 1121); and taking a plurality of refractive index measurements of the strip at a plurality of locations in the cross-sectional area (fig. 3-6).

Katsumi Morishita does not describe extracting a radial strip from the optical member. Matsui describe extracting a radial strip from the optical member (col. 2, lines 51-67), in order to cut out any desire region to perform optical display or optical operation (col. 2, lines 51-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Katsumi Morishita to have the extracting a radial strip from the optical member taught by Matsui in order to cut out any desire region to perform optical display or optical operation.

Regarding claim 19, Katsumi Morishita further describes using the map to locate a portion of the optical member having refractive index values corresponding to specified refractive index values (fig. 4-6).

Katsumi Morishita does not describe extracting the portion to form an optical blank having refractive index values corresponding to specified refractive index values.

Matsui describe extracting the portion to form an optical blank having refractive index values corresponding to specified refractive index values (col. 2, lines 51-

67), in order to cut out any desire region to perform optical display or optical operation (col. 2, lines 51-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Katsumi Morishita to have the extracting the portion to form an optical blank having refractive index values corresponding to specified refractive index values taught by Matsui in order to cut out any desire region to perform optical display or optical operation.

Regarding claim 20, Katsumi Morishita further describes providing the optical blank (fig. 1, optical waveguide); and providing information corresponding to a three-dimensional refractive-index map of the optical blank (fig. 4-6).

Regarding claim 21, Katsumi Morishita further describes corresponding to a three-dimensional refractive-index map of the optical blank (fig. 4-6) includes transmitting the information using e-mail (page 1121, see desktop computer).

Regarding claim 22, Katsumi Morishita further describes the step of providing information corresponding to a three-dimensional refractive-index map of the optical blank (fig. 4-6) includes transmitting the information over the Internet (see desktop computer).

Regarding claim 23, Katsumi Morishita further describes the step of providing information corresponding to a three-dimensional refractive-index map of the optical blank (fig. 4-6) includes transmitting the information using a telecommunications network (see desktop computer).

Regarding claim 25, Katsumi Morishita further describes the step of providing information corresponding to a three-dimensional refractive-index map of the optical blank (fig. 4-6) includes physical delivery of a computer readable medium having stored thereon a data structure (page 1121), the data structure including at least one field containing information corresponding to a three-dimensional map of the optical blank (fig. 4-6).

Regarding claim 24, Katsumi Morishita further describes the network is a wireless network (see desktop computer).

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103 (in light of KSR v. Teleflex, See MPEP 706.02(j)), the examiner should set forth in the Office action:

1. the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
2. the difference or differences in the claim over the applied reference(s),
3. the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
4. an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

Katsumi Morishita and Matsui are analogous art because they are from the same field of endeavor, measure photonic device.

Response to Arguments

4. Applicant's arguments filed 07/02/2008 have been fully considered but they are not persuasive.

A. Applicant argues in the arguments that the prior art does not show “the three dimensional map” (remarks page 13, line 19-20, page 14, lines 3).

B. Applicant argues in the arguments that the prior art does not show “a three-dimensional map that includes a plurality of refractive index values measured or distributed throughout the interior of the optical member” (remarks page 14, lines 6-8, lines 14-19, lines 26-28, page 15, lines 1-3).

Reminds the applicant that although the specification may be consulted for the meaning of terms used in the claims, this specification's discussion of “the three dimensional map” does not approach the specificity needed to define precise and definite boundaries of the term in the claims such as would be needed to satisfy *Interactive Gift Express // In re Vogel*. The current claims of the application are not restricted to the narrower limitation on which the Applicant's arguments are based.

It is not appropriate for the Examiner to attempt to harmonize the Applicant's interpretation of claim language with the specification and prior art. Such an approach puts the burden in the wrong place. While claim language can still be amended, it is the Applicant's burden to precisely define the invention of the claims, not the PTO's. The 35 U.S.C. Section 112, paragraph 2, puts the burden

of precise claim drafting squarely on the applicant. The PTO is obligated to reject the claims when the Applicant fails precisely to define in the written description the disputed language, and there is a reasonable alternative. Reminds to the applicants that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In *re* Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

"Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment." *Superguide Corp. v. DirecTV*

Enterprises, Inc., 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004).

See also Liebel-Flarsheim Co. v. Medrad Inc., 358 F.3d 898, 906, 69 USPQ2d 1801, 1807 (Fed. Cir. 2004) (MPEP 2111.01 [R-5] (II))

Words in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning; Phillips v. AWH Corp., 415 F.3d 1303, 1313, 75 USPQ2d 1321, 1326 (Fed. Cir. 2005) (en banc).

Sunrace Roots Enter. Co. v. SRAM Corp., 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc., 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003), and where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999), See MPEP 2111 [R-5](III).

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings.”). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” Multifarm Desiccants Inc. v. Medzam

Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

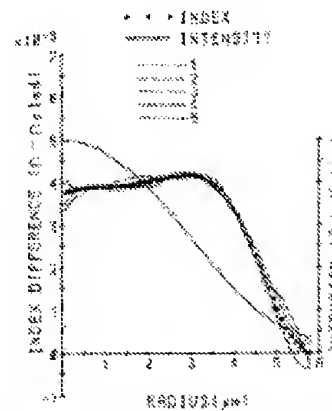
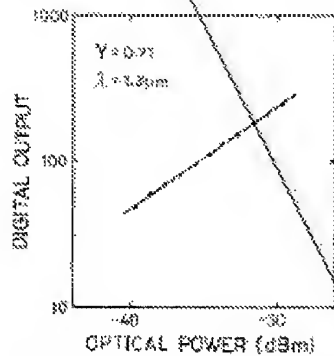
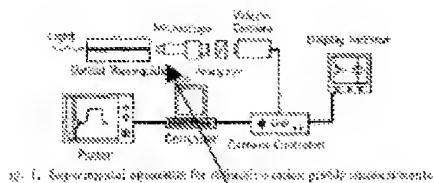
Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings.”). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

In this case, the applicant has not define any specific term in anyway, therefore USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

In this case, a common meaning of “map” means “to be assigned in a relation or connection” as define by Merriam-Webster (see attachment).

In reference to **A**, Katsumi Morishita describes “the three dimensional map” in page 1121, fig. 2-6.

In reference to **B**, Katsumi Morishita describes "a three-dimensional map that includes a plurality of refractive index values measured or distributed throughout the interior of the optical member" in page 1121, fig. 1-3, 4-6.



A three-dimensional map that includes a plurality of refractive index values measured or distributed throughout the interior of the optical member

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S. Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Tung S. Lau/

Tung S. Lau, Art Unit 2863

Primary Examiner

October 11, 2008